

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION**

CIVIL CASE NO. 2:11cv00002

**RICK HODGES and CORNERSTONE)
HOMES OF HIGHLANDS, LLC,)**

Plaintiffs,)

vs.)

**FIRST AMERICAN BANK AND)
TRUST COMPANY,)**

Defendant.)

ORDER

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THIS MATTER is before the Court on the Defendant's Motion for Sanctions [Doc. 39] and the Magistrate Judge's Memorandum and Recommendation [Doc. 42] regarding the disposition of that motion.

The Defendants have filed two motions to compel the Plaintiffs to respond to their discovery requests in this case. [Docs. 30, 35]. In both instances, the Plaintiffs failed to respond to the Defendants' motion. The motions to compel were granted, and the Defendants were awarded their reasonable expenses incurred in filing the motions. [Docs. 33, 37, 40, 41].

The Defendant now moves the Court to strike the Amended Complaint as a sanction for Plaintiffs' failure to comply with the Court's Order requiring them to provide discovery responses. [Doc. 39]. Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, the Honorable Dennis L. Howell, United States Magistrate Judge, was designated to consider the Defendant's Motion for Sanctions and to submit to this Court a recommendation for the disposition of that motion. On April 6, 2012, the Magistrate Judge filed a Memorandum and Recommendation in this case recommending that the Defendant's Motion for Sanctions be granted and that the Plaintiffs' Amended Complaint be dismissed with prejudice due to the Plaintiffs' failure to comply with a lawful Order of this Court. [Doc. 42]. The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service. [Id.].

The Plaintiffs filed timely Objections to the Memorandum and Recommendation on April 11, 2012. [Doc. 45]. Plaintiffs' counsel also filed a statement under seal regarding his conduct in this case. [Doc. 43]. Following the filing of a Notice of Appearance by attorney Kenneth R. Hunt

[Doc. 46], the Plaintiffs filed a certification that discovery responses have now been served upon Defendant's counsel. [Doc. 47].

In light of the Plaintiffs' actions, the Court hereby enters the following Order.

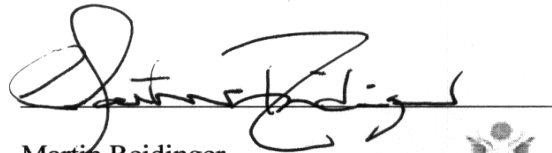
IT IS, THEREFORE, ORDERED that the Magistrate Judge's Memorandum and Recommendation [Doc. 42] is **REJECTED**, and the Defendant's Motion for Sanctions [Doc. 39] is **DENIED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that the Pretrial Order and Case Management Plan [Doc. 17], as amended [Docs. 26, 32], is hereby further **AMENDED** as follows:

- (1) All discovery shall be completed no later than **August 15, 2012**;
- (2) Mediation shall be completed by **September 1, 2012**;
- (3) All motions except motions *in limine* and motions to continue shall be filed no later than **September 15, 2012**;
and
- (4) Trial is scheduled to commence with a jury during the first civil term beginning on or after **January 28, 2013**.

IT IS SO ORDERED.

Signed: May 4, 2012


Martin Reidinger
United States District Judge

